



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA- 174648

PRELIMINARY RECITALS

On May 23, 2016, the above petitioner filed a hearing request, under Wis. Admin. Code § HA 3.03, to challenge an action by the Department of Health Services, Bureau of Long-Term Support (DHS). The hearing was held on July 6, 2016, by telephone.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction to review a change in DHS policy, limiting participant hired workers to 40 hours per week.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
Bureau of Long Term Support
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED], Quality Services Specialist
1 South Pickney St., Suite 320
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

Mayumi Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner's mother has been providing paid personal care and supportive home care services to the Petitioner. (Testimony of Petitioner's mother; Exhibit E)

3. In March 2016, the Department of Health Services changed its Health and Safety policy for IRIS participants to limit participant hired works, including personal care and supportive home care workers, to 40 hours per week. As such, any hours over 40 hour per week would have to be performed by someone other than Petitioner's mother. (Exhibits B, C and D)
4. The Petitioner's mother, on the Petitioner's behalf, filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 23, 2016. (Exhibit 1)

DISCUSSION

Under Wis. Admin. Code §DHS 104.01(50(a)1., Medicaid recipients have the right to a fair hearing when, "aggrieved by action or inaction of the agency or department..." However, this right is limited by Wis. Admin. Code §DHS 104.01(50(a)4., which states, "No fair hearing is required when the sole issue being petitioned involves [a]...change which affects an entire class of recipients and is the result of a change in state or federal law."

Here, the change is that Petitioner's mother may no longer be paid for providing more than 40 hours of personal care/supportive home care services to Petitioner. So, Petitioner will have to hire someone else to provide the remaining hours of service to him.

This change is the result of a change in state law, which affects all participants in the IRIS program. As such, per Wis. Admin. Code §DHS 104.01(50(a)4., there is no jurisdiction to review this change in the law/policy.

If Petitioner's mother does not like the new policy/law then she must either file a claim in circuit court, or contact her legislator.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals has no jurisdiction to review a change in DHS policy, limiting participant hired workers to 40 hours per week.

THEREFORE, it is

ORDERED

The petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

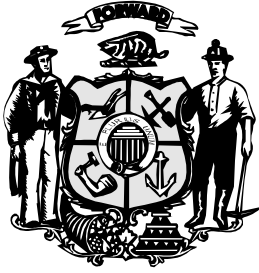
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 12th day of July, 2016.

\s _____
Mayumi Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 12, 2016.

Bureau of Long-Term Support